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OFFICE OF PETITIONS

TEXAS INSTRUMENTS INCORPORATED
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In re Application of :
Timothy M. Schmidl et al. :
Application No. 09/605,610 : DECISION ON PETITION UNDER
Filed: June 28, 2000 : 37 C.F.R. §1.137(B)
Attorney Docket Number: TI- :
29425 :
Title: WIRELESS COMMUNICATIONS :
SYSTEM WITH CYCLING OF UNIQUE :
CELL BIT SEQUENCES IN STATION :
COMMUNICATIONS :

This is a decision on the petition filed August 25, 2006, pursuant to 37 C.F.R. §1.137(b)¹, to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed February 8, 2006, which set a shortened statutory period for reply of three months. An after-final amendment was received on July 13, 2006, along with a three-month extension of time, and an advisory action was mailed on July 28, 2006. No further extensions of time under the

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

provisions of 37 C.F.R. §1.136(a) were available, and no further responses were received. Accordingly, the above-identified application became abandoned on August 9, 2006.

With the present petition, Petitioner has submitted a second after-final amendment, the petition fee, and the proper statement of unintentional delay.

Petitioner has met requirements (2) and (3) of 37 C.F.R. §1.137(b). A terminal disclaimer is not required.

Regarding the first requirement, Petitioner must submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed². In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1) (i.e., a Notice of Appeal and fee required by law; an amendment that prima facie places the application in condition for allowance; a continuing application under 37 C.F.R. §1.53(b); a request for continuing examination under 37 C.F.R. §1.114, if applicable; or a 37 C.F.R. §1.129(a) submission, if applicable). An amendment was received along with the instant petition. This amendment was considered by the Examiner, but it failed to place the application in condition for allowance. A copy of the Examiner's Advisory Action has been enclosed.

Therefore, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(b)," and should include an acceptable submission. This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanowski, and may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

² See M.P.E.P. 711.03(c).

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁴ Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

⁵ 571-273-8300 - please note this is a central facsimile number.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

Encl. Examiner's Advisory Action

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/605,610

Applicant(s)

SCHMIDL ET AL.

Examiner

Anh-Vu H. Ly

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 5, 10, 25 and 30.
Claim(s) rejected: 1-4, 6-9, 11-24, 26-29 and 31-56.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: does NOT place the application in condition for allowance because: The amendment after final dated August 25, 2006 does not place the application in condition for allowance. Claims 5, 10-16, 25, 33-36 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claims. However, claims 39-56 are rejected under 35 USC 102 (b) as being anticipated by Silventoinen, M. et al (WO 98/07291). Applicant argues in pages 9 and 10 that Silventoinen does not disclose the training sequence uniquely distinguishes a first cell from a second cell adjacent to the first cell as required by claims 39 and 48. Examiner respectfully disagrees. First of all, the after final amendment dated July 13, 2006 did not get enter. Therefore, applicant's argument is not directed to the set of claims as currently examined.